

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 623
FINAL READING

Introduced by Brashear, 4

Read first time January 19, 1999

Committee: Judiciary

A BILL

- 1 FOR AN ACT relating to the criminal procedure; to authorize the use
- 2 of audiovisual court appearances and written arraignments
- 3 by a detainee or prisoner.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. It is the intent and purpose of sections 1 to
2 7 of this act to authorize the usage of audiovisual court
3 appearances and certain district court arraignments by writing in
4 criminal proceedings consistent with the statutory and
5 constitutional rights guaranteed by the Constitution of the United
6 States and the Constitution of Nebraska.

7 Sec. 2. (1) Except for trials, when the appearance of a
8 detainee or prisoner is required in any court at a criminal
9 proceeding, the detainee or prisoner may make an audiovisual court
10 appearance. However, a judge or magistrate is not required to
11 allow an audiovisual court appearance and may order the detainee or
12 prisoner to appear physically in the courtroom.

13 (2) An audiovisual court appearance shall meet the
14 conditions required by this act.

15 Sec. 3. When an audiovisual court appearance is made:

16 (1) The detainee or prisoner shall sign a written consent
17 and waiver of his or her right to a physical personal appearance at
18 the proceeding;

19 (2) The judge or magistrate shall verify the written
20 consent and waiver and obtain an oral waiver of the detainee's or
21 prisoner's right to a physical personal appearance at the
22 commencement of the proceeding;

23 (3) A transcribed record and a videotape of the
24 proceeding shall be made; and

25 (4) The audiovisual communication system and the
26 facilities shall meet the requirements of section 4 of this act.

27 Sec. 4. The audiovisual communication system and the
28 facilities for an audiovisual court appearance shall:

1 (1) Operate so that the detainee or prisoner and the
2 judge or magistrate can see each other simultaneously and converse
3 with each other verbally and documents can be transmitted by
4 facsimile equipment between the judge or magistrate and the
5 detainee or prisoner;

6 (2) Operate so that the detainee or prisoner and his or
7 her counsel, if any, are both physically in the same location
8 during the audiovisual court appearance; or if the detainee or
9 prisoner waives the right to have counsel physically present and
10 the detainee or prisoner and his or her counsel are in different
11 locations, operate so that the detainee or prisoner and counsel can
12 communicate privately and confidentially by way of telephone and be
13 allowed to confidentially fax papers back and forth;

14 (3) Be at locations conducive to judicial proceedings.
15 Audiovisual court proceedings may be conducted in the courtroom,
16 the judge's or magistrate's chambers, or any other location
17 suitable for audiovisual communications. The locations shall be
18 sufficiently lighted for use of the audiovisual equipment. The
19 location provided for the judge or magistrate to preside shall be
20 accessible to the public and shall be so that interested persons
21 have an opportunity to observe the proceeding; and

22 (4) Have at least two video cameras, one to record the
23 detainee or prisoner and one to record the judge or magistrate.
24 The cameras must also be capable of recording counsel and witnesses
25 as necessary. There shall be at least two television monitors so
26 that the detainee or prisoner and the judge or magistrate can
27 observe the proceeding at each other's location simultaneously.
28 There shall be facsimile equipment at both the detainee's or

1 prisoner's location and at the judge's or magistrate's location.

2 Sec. 5. In a proceeding in which an audiovisual court
3 appearance is made:

4 (1) Facsimile signatures are acceptable for purposes of
5 releasing the detainee or prisoner from custody; however, actual
6 signed copies of the release documents must be promptly filed with
7 the court and the detainee or prisoner must promptly be provided
8 with a copy of all documents which the detainee or prisoner signs;
9 and

10 (2) A copy of the videotape of such proceeding shall be
11 made upon written request of the detainee or prisoner or the
12 prosecutor if the request is received by the court within thirty
13 days of the date of the proceeding. The original videotape may be
14 destroyed one year after the date of the proceeding unless an
15 appeal is taken, in which case the original videotape shall be
16 preserved until all appeals are concluded.

17 (3) On motion of the defendant or the prosecuting
18 attorney or in the court's discretion, the court may terminate an
19 audiovisual appearance and require an appearance by the detainee or
20 prisoner.

21 Sec. 6. The district courts may accept arraignments in
22 writing if the detainee or prisoner has entered a not guilty plea
23 in county court. The arraignment form shall contain the necessary
24 consent and waiver of the right to a physical appearance and shall
25 be signed by the detainee or prisoner and his or her counsel of
26 record, if any.

27 Sec. 7. The Supreme Court shall promulgate rules of
28 practice and procedure for implementation of this act.